

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
New Part 4 of the Commission's Rules)	
Concerning Disruptions to Communications)	ET Docket No. 04-35
)	

COMMENTS OF WITEL COMMUNICATIONS, LLC

May 25, 2004

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Summary

WilTel commends the FCC for initiating this important proceeding to update its rules on outage reporting. As a nationwide facilities-based carrier with one of the largest next-generation networks in the United States, WilTel understands its responsibility and is interested in doing its part for homeland security.

WilTel generally supports the Commission's proposals regarding outages that potentially affect telephony users, but believes that the rules must be clarified in two important respects. First, the Commission must clarify which carrier has the obligation to report an outage on an underlying carrier's network when an outage affects the end user customers of a reseller or an IXC purchasing services from a local exchange carrier ("LEC"). Second, the rules must be clarified to require sharing of information by resellers with the underlying carrier that experiences a reportable outage.

In addition, WilTel opposes the Commission's proposal that facilities-based IXCs be required to report DS3 outages when the impact of such an outage on the end users is unknown to the IXC. WilTel contends that the proposed requirements are unnecessarily broad and overly burdensome.

Lastly, WilTel does not agree with the proposed proxy mechanism for determining blocked calls resulting from tandem outages. As described below, WilTel believes that the proxy mechanism is unnecessary and inaccurate.

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COMMENTS OF WILTEL COMMUNICATIONS, LLC

WilTel Communications, LLC ("WilTel") respectfully submits these Comments in response to the *Notice of Proposed Rulemaking* issued by the Federal Communications Commission (the "Commission") in the above-captioned proceeding (the "*NPRM*"). WilTel is a facilities-based interexchange carrier ("IXC") that primarily provides wholesale telecommunications services to resellers that, in turn, have the relationships with the "end users" of such services.

WilTel supports the Commission's efforts in this proceeding and, like the Commission, recognizes the importance of rapidly providing full and accurate information on service disruptions that may have an impact on homeland security, the public health and safety, or the Nation's economy. The security of our Nation is a primary concern for all citizens, and one in which WilTel not only has an interest in supporting but more importantly one in which it acknowledges a crucial role to play as a leading facilities-based telecommunications service provider. WilTel further recognizes the ever-expanding importance that stable telecommunications networks play in enabling quick and reliable communication to, from and among police, fire and other "first responders" in emergency situations. WilTel, therefore, shares in the desire of the Commission to ensure that the reporting requirements for service disruptions are

sufficiently strong to meet the Nation's needs. To be effective, however, such requirements must be clear and targeted to their ends to avoid defeating the purpose of the proposed rules and over-burdening telecommunications providers providing essential services.

I. Outage-Reporting on Underlying Carrier's Network

The Commission should clarify the proposed rules to address the reporting requirements when an outage affects service provided by a carrier that does not own or operate the underlying network upon which the outage occurs. For example, the proposed rules do not state whether a facilities-based IXC obtaining switched access services from a LEC would be responsible for reporting an outage that occurs on the LEC's network and affects the IXC's provision of services to its customers. Nor do the proposed rules make clear whether a switchless reseller obtaining telecommunications services from a facilities-based IXC is responsible for reporting an outage that occurs on the IXC's network and affects the reseller's customers.

Under the existing outage-reporting rules, an IXC or a LEC need only report outages that occur on facilities that they own, operate or lease. (*See* 47 CFR 63.100(b)). The proposed rule, however, requires providers to report outages over any facilities that it "otherwise utilizes":

All wireline communications providers *that operate transmission, routing, or switching facilities* and provide interstate or international communications service shall submit electronically an Initial Communications Outage Report to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, *or otherwise utilize*, an outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes of either telephony or paging; (2) affects at least 1,350 DS3 minutes

(*NPRM* at 36, Appendix A - Proposed Rules, §4.9(f) (emphasis added)). This rule appears to make a facilities-based IXC responsible for reporting outages on a LEC's network. For example, if customers of a facilities-based IXC experience an interruption in service due to an outage on a LEC network that the IXC was utilizing to provide the service to its customers, the proposed rules would require the IXC (as an operator of transmission, routing, or switching facilities of its own) to report the LEC's outage simply because the outage occurred on facilities that the IXC was "utilizing" at the time.

It is unreasonable to expect that an IXC that is merely buying switched access from the LEC be required to report an outage on the LEC's facilities. In the first place, it is sufficient that the LEC that owns or operates the particular facilities over which the outage occurred report the outage. Requiring more than one carrier in the chain to report will result in double reporting and, therefore, additional burdens for the carriers and the Commission. Moreover, requiring a carrier to report an outage that is not on its network unfairly, unnecessarily and inaccurately raises the implication of an outage on the reporting carrier's network.

In addition, requiring reporting from an IXC that is merely purchasing switched access services from a LEC would not further the Commission's goals set forth in the *NPRM*. First, it does not help "providers discover potential vulnerabilities *in their own systems*." (*NPRM* at 11, emphasis added). Similarly, such a requirement would likely do nothing to improve upon the "best practices" since the only vital information concerning the outage lies with the owner and operator of the network, so no valuable information would be made public by the IXC which would benefit other carriers. The owner and operator of the facilities over which the outage occurs is clearly the best source of

information about the outage itself with the goal in mind of learning and preventing similar outages in the future.

WilTel, therefore, requests that the proposed rules be clarified to provide that the LEC providing switched access over the particular facilities over which the outage occurred should be required to report the outage. Simply put, in this situation the IXC should be responsible for reporting outages on its network, and the LEC should be responsible for reporting outages on its network.

In contrast to an IXC's burden of reporting outages on LEC access networks, the proposed rules stop short of holding switchless resellers responsible for reporting outages on a facilities-based IXC's network because the reseller would not be considered a wireline provider operating transmission, routing or switching facilities. While the proposed rules are still unclear on this point, the Commission must ensure that it acts consistently and fairly in imposing reporting burdens on different industry groups. If IXCs must report outages on LEC switched access facilities, then it is fair that switchless resellers similarly must report outages on IXC facilities affecting the resellers' customers. WilTel submits, however, that the better course would be to require LECs and IXCs to report outages on their respective switched networks that affect end users of their customers – i.e., IXC customers for a LEC outage or reseller customers for an IXC outage.

II. DS3 Outage-Reporting

WilTel appreciates and supports the Commission's intent in proposing outage-reporting requirements for DS3 outages, but respectfully contends that the proposed requirements are unnecessarily broad and overly burdensome. Nevertheless, WilTel does

not necessarily oppose the proposed rules to the extent that they would require facilities-based IXC's to report DS3 outages on services that the IXC *knows* will likely impact the telephony end users of such services.

Although an outage on a private line circuit could result in interruptions to telephony end users, requiring the private line provider to report the outage will result in an unnecessarily large number of reports that nevertheless don't accurately reflect the outage situation. For example, each time a fiber is cut on a facilities-based carrier's network, the Commission will receive an outage report because, as explained below, the facilities-based carrier cannot determine whether the cut has any effect on telephony end users.

In contrast with the underlying carrier's provision of switched services to resellers,¹ when the underlying carrier provides private line services to a carrier-customer, the underlying carrier does not maintain full network control over the services provided to the end user. In the provision of telephony services, IXC's generally implement protective measures to ensure that if a fiber is cut, the switched service will switch to an alternative route or facility; as a result, few end users of such services experience any outage, even when part of the underlying network goes down. When a carrier-customer buys a private line from the underlying carrier, however, the customer can do many different things with the private line that could increase or decrease the chances for an outage to telephony end users. Facilities-based IXC's (or LEC's) have no control over whether their reseller (or IXC) customers provide necessary protection

¹ In this section, WilTel refers to the facilities-based provider of DS3 circuits as the "underlying carrier" or the "IXC" and the company buying the DS3 circuits as the "reseller". However, WilTel believes that the same considerations and rules should apply when an IXC buys special access services (or the equivalent) from a LEC.

against potential outages that may impact their end customers. It is the reseller (or IXC), not the underlying carrier, that determines whether or not it will attach switching or other equipment, or provide different degrees of network protection to its end customers. And the underlying carrier is not generally privy to such decision-making by its resellers.

In particular, the IXC usually will not know whether the reseller plans to provide a protected service when it purchases a private line from the IXC. Without this knowledge, the IXC can only guess as to what impact a DS3 outage will have on the ultimate end users. Moreover, while the issue of determining the number of potential end users affected by an outage of an IXC's switched services can be resolved (as described below) simply by requiring the resellers to provide the information to the IXC, the IXC would have to obtain a significantly greater amount of information from its private line customers. These customers may or may not be providing switched services, may or may not have provided for network protection, and, if they have provided for protection, may have done so through an array of mechanisms and providers.

WilTel respectfully submits that private line resellers (and not the IXCs that provide the private line to the resellers) can and should be required to report on outages that affect their end users (or those of the reseller's customers) even when the actual cause was a fiber cut or other failure of the IXC's network. The reseller is best placed to know whether an outage will affect end users, and to prevent such effect by providing switched services only over protected circuits. In contrast, IXCs cannot force resellers to buy protected circuits.

As the Commission points out in the *NPRM*, it is reasonable to expect that private line resellers will provide protected services to its end customers. Specifically, it is a

“best practice” for service providers and network operators to “provide additional levels of redundancy and emergency response for critical infrastructure facilities” where feasible. (NRIC Best Practice No. 6-6-5057). The Commission should require (and the IXC should be entitled to presume) that a reseller will be using private line services to provide a protected service to its customers, and the IXC should, therefore, have no reporting obligations for such outages.

WillTel acknowledges that in some cases the IXC might be aware that its customer is providing unprotected switched services. To the extent that the IXC has actual knowledge that an outage on a given DS3 will likely impact the end users, it would not be unreasonable for the Commission to require the IXC to report an outage on behalf of the reseller. The underlying carrier may have actual knowledge that an outage will impact the end users because the reseller has represented to the underlying carrier that either (i) the reseller is not in fact providing a protected service to its end customers for a given DS3, or (ii) the underlying carrier is the provider of both the primary and all redundant paths for a given protected service. Under either circumstance, the IXC would have actual knowledge that an outage on a given DS3 will likely impact the reseller’s end customers.

III. Inter-Carrier Sharing of End User Information

WillTel supports the Commission’s efforts to more accurately report the actual effect of an outage by referring to “users” rather than “customers”. However, in order for a facilities-based IXC to accurately report the number of end users potentially affected by an outage, the IXC must have access to information about the provision of such services to the IXC customer and its end users. In the case of a reseller purchasing services from

a facilities-based IXC, the reseller, not the IXC, has the relationship with the end users. The reseller, therefore, possesses necessary information about the impact of a service outage on its end users.

As applicable to telephony services, the proposed rules mandate that a facilities-based IXC report outages that potentially affect at least 900,000 user minutes of either telephony or paging. “User minutes” for telephony services are defined as the number of “assigned numbers” (including numbers not yet working but having a customer service order pending for up to five days) plus the number of “administrative numbers” potentially affected by the outage, multiplied by the duration of an outage in minutes. Only the reseller will know how many assigned numbers and administrative numbers are associated at any given time with a switch affected by an outage. Additionally, only the reseller knows how many service orders of its customers are pending which should be included in this calculation. The only way the underlying IXC provider can obtain this information is directly from the reseller.

Although the underlying IXC will be required to report this information, the proposed rules do not provide for, or place any requirement on, the sharing of such information between resellers and facilities-based IXCs. The IXC has no way of determining, without the assistance of the reseller, how many assigned telephone numbers exist that may be potentially affected by an outage. Clearly, this information is critical to the network provider experiencing the outage in order to comply with the proposed reporting requirements.

In the event the Commission adopts the proposed rules without providing for the sharing of necessary information, the underlying carriers will not have sufficient

information to fulfill its obligations. The result could be under-reporting of major network outage events simply due to the lack of information necessary for the network provider to know that the outage potentially affected a given threshold number of end users. Additionally, the reports that are submitted to the Commission would potentially contain estimated, inaccurate information thereby defeating the purpose of revising the reporting rules in the first place. Without accurate and verifiable information to support outage reporting, there is no reliable way of knowing if a given outage constitutes a potential threat to homeland security, at least no more reliable than is provided under existing rules. The proposed rules must address the need to share this information in order for such rules to have any meaningful purpose. WiTel, therefore, requests that the Commission revise the proposed rules to require that facilities-based IXC's that are subject to the mandatory outage-reporting requirements be given reasonable access to any information about the reseller's customers necessary for the IXC to provide a complete and accurate report to the Commission.

In an effort to assist the Commission in this regard, WiTel proposes the following. A reseller purchasing voice services from a facilities-based IXC must provide to the IXC in writing the number of voice switches that the reseller is attaching to the underlying network, together with the number of "end users" being serviced through each switch (or, for a switchless reseller, the "end users" being serviced by the reseller). In addition, the reseller must notify the IXC in writing each time the reseller adds a new switch to the network, or removes a switch from the network. Further, the reseller, on a quarterly basis, must provide the IXC information sufficient to allow the IXC to estimate at any given time how many pending customer orders less than 5 days old may exist on

each active switch. The resellers should additionally be required to provide any further or additional information as may be needed by the IXC in order for the IXC to comply with its mandatory reporting requirements under FCC Rules.

IV. Tandem Outages

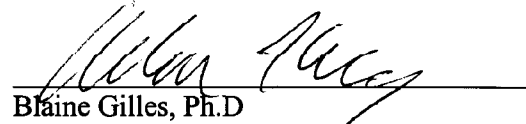
WilTel does not agree with the proxy mechanism for determining blocked calls resulting from tandem outages. The actual number of calls made at the same time of day on the same day of the week as the occurrence of the outage represents the closest estimate possible of the number of blocked calls during an outage. It is inaccurate and misleading to suggest that the number of blocked calls is 3 times the actual number of blocked calls merely because a caller may attempt to redial the same call. The caller is merely trying to complete the same call, not trying to complete 3 different calls.

V. Conclusion

For the reasons set forth herein, WilTel respectfully requests that the Commission clarify the proposed rules with regard to outage-reporting obligations on an underlying carrier's network, and additionally requests that the Commission revise the proposed rules with regard to outage-reporting requirements for private line services, the sharing of information between carriers, and the use of the proxy mechanism for determining blocked calls.

Respectfully submitted,

WILTEL COMMUNICATIONS, LLC

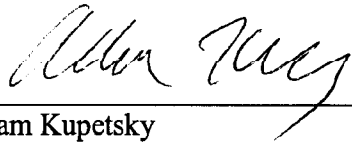
A handwritten signature in black ink, appearing to read "Blaine Gilles", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of WiTel Communications, LLC in ET Docket No. 04-35 was delivered by electronic mail on the 25th day of May, 2004, to the parties listed below.


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